App. F. IX-4

Previous References

1930. (Law)

File No. 4 - 30

Serial Nos. 1-4

Later References

Preserve B 30/1/43 (18)

General and Revenue Secretariat.

Serial Nos. Four

Part B for Nov 1930

SUBJECT.

Re. Criminal (Contempt) petition 1150 of 25-30
Cr. D. Thanadar & ors. vs. Md. Akbar Khan)
On the 1st & 4th Cents. questioning
privilege.

By Govt
14/11/30

Serial No.	
1	Letter No. 2/Crl dated 1st July 1930 from the Registrar, High Court, forwarding a notice duplicate in Crl. Revision pet. No. 115 of 1929-30, for service and return I learn that this case will be heard alongwith the C.R.P 141 of 29-30 filed by Mr. B.K Ramachari against Mr Abbas Khan regarding the same subject matter — Mr G.A. has been instructed to appear in the latter case (Vide linked file). He will have to appear for govt in this (Cr.R.P) also — Draft accordingly put up for favour of approval The notice has to be signed by the Chief Secy and returned to the High Court — Subd for favour of kind signature & approval of the draft — Chief Secy Dated 9.7 10-7-30 DMP 5/7 Issue today MM 7/7 The Registrar, High Ct Letter no. P 111 dated 7th July 1930 returning the notice in Cr. R.P. 115 of 29-30 duly endorsed — To Govt Advocate Letter no. 112 d 7th July 1930 requesting him to appear in Cr. R.P. 115/29-30 (Ramachandra vs Abbas Khan) Subd to await report 7 July DMP 18/7

Note—Contn. Sheet

WD 01684—GPB—30,000—20-4-29

57 of 1930

Telgm :
JUSTICE

HIGH
CHIEF COURT OF MYSORE,
Public Office Buildings, Cubbon Park,

Bangalore, 30th June 1930
1st July 1930.

~~R. O. C.~~ ~~Dis~~ No. 2 Cri

FROM

H.M. KRISHNASWAMI,
~~I. Singaravelu Mudaliar~~ Esq., B.A., B.L.,
Registrar, ~~Chief~~ High Court of Mysore.

To

N. MADHAVA RAO, Esq., B.A., B.L.,
Chief Secretary to Government,
B A N G A L O R E.

CHIEF SECRETARY
1 JULY 1930

SIR,

I am directed to forward herewith a notice in duplicate in Criminal Revision Petition No.115 of 1929-30 on the file of this Court for service and return with the mode of service duly endorsed thereon.

I have the honour to be.

Sir,

Your most obedient servant,

To Law Secy with Compliments for favour of necessary action

Mrinivasaiyan
For Registrar. (on leave)

GS.

Appendix F G—1

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the 193

Date of issue 2/7/30

Signed by.....

List of enclosures.....

Copied by.....

Examined by.....

Section

File No. 11-30

Serial No. 2

No. 111 (1)

To

The Registrar
High Ct of Lahore

Sir,

I have the honour to return herewith ~~the~~ ~~duly endorsement thereon~~ the notice in Cr. R. P. No. 115 of 1929-30 on the file of the High Court, with the mode of service duly endorsed thereon.

I have etc

DC
Chiefship

over

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE,

General and Revenue Secretariat

No. [illegible]

Dated, Bangalore, 7th July 1930 193

From The ~~Chief~~ Secretary to the Government of His Highness the Maharaja of Mysore, ~~Law Department~~ Law Department.

To

The Registrar,
High Court of Mysore, Bangalore.

Sir,

I have the honor to return herewith the notice in Cr. R.P. No. 115 of 1929-30 on the file of the High Court with the mode of service duly endorsed thereon.

I have the honor to be,

Sir,

Your most obedient servant,

N Subramanya Rao

Chief Secretary to Government.

c.n.

4

Appendix F G—1

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the 193

Date of issue 7/7/30

Signed by.....

List of enclosures.....

Copied by.....

Examined by.....

T1

Section Legal

File No. 4-30

Serial No. 3

No. 112(1)

Immediate

To

The Government Advocate

Sir,

I am directed to forward herewith the duplicate of the notice in Criminal Revision Petition 115 of 29-30 (Mr. D. Shamarao vs Mr. Abbas Khan) on the file of the High Court of Mysore and to request you to appear for Government in the case, which is posted to 10th July 1930. The result of this petition as well as that of C.R.P

over

5

1125 7th July 30.

The Government Advocate
Bangalore.

I am directed to forward herewith the duplicate of the notice in Criminal Revision Petition 115 of 29-30 (Mr. D.Shama Rao Vs,Mr. Abbas Khan) on the file of the High Court of Mysore and to request you to appear for Government in the case, which is posted to 10th July 1930. The result of this petition as well as that of C.R.P 141 of 29-30 (Mr. B.K.Garudachar Vs. Mr. Abbaskhan) in which you have been instructed to appear for Government as per this office letter No.P. 3932 dated 29th January 1930, may kindly be intimated to Government in due course.

I have the honor to be,
Sir,
Your most obedient servant,

for Legal Remembrancer
and Secretary to Government
Law Department.

c.n.

6 1443/930

M. RAMACHANDRA RAO, Esq., B.A., B.L.,
Government Advocate.

DEWAN'S OFFICE
1311
13 SEP 1930

GOVERNMENT ADVOCATE'S CHAMBERS,
PUBLIC OFFICES,
Bangalore, 9th Sept., 1930.

D. O. No. 13

Dear Mr, Mahadevayya,

I write to inform you that orders were pronounced by the High Court yesterday in Civil Revision Petition No. 141 of 1929-30 and Criminal Revision Petition No. 115 of 1929-30 in both of which the question of privilege claimed by the Government in respect of the production of the evidence given before the Disturbances Committee in camera was argued some time ago. Both the petitions stand dismissed and the orders passed by the lower courts upholding the privilege have been confirmed.

Yours sincerely,
M. Ramachandra Rao

P. Mahadevayya, Esq., B.A., B.L.,
Secretary to Government,
Law Department, Bangalore.

7

Rep 1425 9 9/9/1930

Dear Mr. Ramachandra Rao,

In reply to your D.O.letter No.13 of today, I am to request you to kindly obtain and send for the information of Government copies of the orders passed by the High Court in both the cases regarding the question of privilege of the in camera evidence.

Yours sincerely,

M.Ramachandra Rao, Esq., B.A.,B.L.,
Government Advocate, Bangalore.

OFFICE OF THE SECOND MEMBER OF COUNCIL
17 SEP. 1930
No. 2250

OFFICE OF THE FIRST MEMBER OF COUNCIL
12 SEPT. 1930
No. 2635

Returned with Compliments
11/9/30
Law secy)
For perusal
1st Member
Dewan
13/9
13/9/30
2nd Member
23/9

1728/30

In reply please refer to
No. 130

Tel. Address:
"JURIST," Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore...17th...September...*19*30.

Law 4-30-4

FROM

M. RAMACHANDRA RAO, ESQ., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

The Secretary to the Government
of H. H. The Maharaja of Mysore,
Law Department, BANGALORE.

SIR,

As desired in your D.O. letter No.P.1425/Law. dated the 9th September 1930, I have the honor to forward herewith, a copy of the Order passed in Civil Revision Petition No.141 of 1929-30 on the file of the High Court of Mysore, (B.K.Garudachar VS. Mohammad Abbas Khan) dismissing the Petition with costs of Government.

I have the honor to be,
Sir,
Your most obedient servant,

M. Ramachandra Rao

Government Advocate.

CSN.

R

IN THE HIGH COURT OF MYSORE AT BANGALORE.

GOVT. ADVOCATE'S OFFICE
SEP
BANGALORE.

Monday the 30th day of J u n e 1930.

BEFORE

HR. JUSTICE G. SREENIVASA IYER.

Civil Revision Petition No.141 of 1929-30.

B. K. Garudachar .. Plaintiff .. PETITIONER

(By Mr. H. V. Narasimha Iyengar)

- Vs. -

Abbas Khan .. Defendant .. OPPONENT

(absent and unrepresented).

(By Mr. M. Ramachandra Rao, Government Advocate for Government).

Civil Revision Petition against the order dated 15-7-1929 passed by the District Judge of Bangalore in Original Suit No.17 of 1928-29.

This Civil Revision Petition coming on for hearing this day, the Court pronounced the following:-

O R D E R.

As the question of law raised in this case is/some of importance, the Civil Revision Petition is referred to a Bench for hearing.

HIGH COURT OF MYSORE

(Sd) G. Sreenivasa Iyer.
J U D G E.

Monday

Monday the 8th day of September 1930.

PRESENT

RAJADHARMAPRAVINA

C. S. DORASWAMI IYER, CHIEF JUSTICE.

and

MR. JUSTICE G. SREENIVASA IYER.

This Civil Revision Petition coming on for final hearing on Monday the 14th day of July 1930, and after hearing the arguments of Messrs. Alladi Krishnaswami Iyer and N. V. Narasimha Iyengar for the petitioner and those of Mr. M. Ramachandra Rao, Government Advocate for Government, ~~and~~ the petitioner/opponent being absent and unrepresented, the Court pronounced the following:-

O R D E R.

This is an application, for revision of the order, passed by the District Judge of Bangalore, upholding the plea of privilege, put forward by the Chief Secretary to Government, in the matter of the production of a statement of the defendant, made in the course of proceedings held, in camera, by the Committee appointed by Government, in August 1928, for conducting an authoritative public enquiry into certain matters, connected with the disturbances that occurred in Bangalore City, on the 30th and 31st July 1928.

That Committee was composed of Government officers and leading representatives of the non-official public, and its function was to investigate and report, amongst

other

other matters, on any special causes or influences - which were at work at the time, leading to those disturbances. The Committee adopted its own method of procedure in conducting the enquiry untrammelled by the rules of the law of evidence. The witnesses that appeared before the Committee were not sworn in, and a number of them were examined partly in public, and - partly in camera. At the outset it was announced - that any evidence of a self incriminating nature given by any person would not be made use of against him by the Government. Indeed, it would appear, from the - printed record of the enquiry held in public, that the defendant, amongst others, was, while uncer examination, encouraged, if not actually led, to give statements in regard to certain matters supposed to be within his - knowledge. The statement which the defendant is -- alleged to have thus made, in camera, is now sought to be produced in the suit for damages, pending against him in the District Court.

The Committee dissolved after presenting its report to Government in December 1928, but before its dissolution it moved the Government to pass orders for exempting from production in Court, the Minutes of its proceedings, including the examination of witnesses, in - camera, on the ground, that they fell within the purview of section 123 of the Evidence Act. Thereupon the - Government decided in Government Order dated the 6th - December 1928, that the Minutes in question, were "unpublished official records relating to affairs of State", and that no evidence, dervied therefrom, should be permitted in a court of law. After the dissolution the Committee's records passed into the possession of Govern-

ment

Government, and have since remained in the custody of the Chief Secretary. On summonses taken by the plaintiff for the production of the defendant's statement taken by the Committee in camera, he the Chief Secretary brought to the lower court the said statement, but pleaded privilege in terms of the Government Order referred to above. The District Judge accepted this plea and refused to compel its production.

The correctness of the District Judge's order is contested mainly on the grounds.-

(1) that no Head of the Department relating to the proceedings, in the course of which, the in camera statement was made, has expressed any opinion adverse to its production in Court,

(2) that the defendant's statement in question cannot be regarded as an "unpublished official record relating to affairs of State", and is not therefore privileged under Section 123 of the Evidence Act.

In regard to the first point, the Chief Secretary does not profess to be the officer at the Head of the Department concerned in relation to the statements in question. He claims merely to be the custodian of that record, and admits that he has not even looked into it. But the Committee before which the statement was made opined, before it ceased to function, that its proceedings in camera including the statements of witnesses should be allowed the immunity provided for in section 123 of the Evidence Act. The Government which

constituted

constituted that Committee to function on their behalf, in regard to the particular matter of enquiry into the disturbances, agreed in this view, and declared, as already stated, that the Minutes of the Committee's proceedings in camera were, for purposes of Section 123 of the Evidence Act "unpublished official records relating to affairs of State". In this particular case, the Committee with its personnel chosen by the Government, the scope of its work defined by them, and its expenses met from State funds, was, as it were, a Government Committee with definite functions assigned to it and with instructions to make a report to Government. Such being the case the Head of the Department concerned is Government themselves. The officer contemplated for the purpose of section 123 means, in the circumstances, the person or persons authorised to administer the executive Government of the State; that is to say, the Government. Their decision having now been conveyed to the Court by the Chief Secretary, and also through the Government Advocate, we have to hold, that permission for the production of the Statement called for has been withheld by the competent authority

It is contended that the Government Order in question, referring as it does in express terms only to Minutes of proceedings, was not meant to include the statements made before the Committee in camera, especially in view of the fact that notwithstanding the proposal of the Committee to ~~him~~ include it the Government have not done so. On the other hand, it is argued that the term "Minutes of the proceedings" is wide enough to include statements of witnesses, and that it is unnecessary to specifically refer to the same in the Government Order. We think that the statements of witnesses formed part of the Minutes of proceedings

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proceedings and it has been so held in Dawkins vs. Lord Rokeby 8 Q.B. 255 at pages 262 and 265. We must therefore hold that the expression used in the Government - Order covers statements of witnesses also. Even apart from the Government Order the intentions of Government to claim privilege in respect of the statement in question can, on particular occasions, as it has now been done, be conveyed to the Court by any responsible officer representing Government. As regards the second - point, it is not seriously disputed that the statement in question is an unpublished record. In the view we have taken of the constitution and functions of the -- Committee, and the purpose of its report for the adoption of measures in public interests, we are inclined to the opinion that the Minutes of proceedings must be treated as an official record, especially so, after they have passed into the hands of Government. In the case of the Champaran Agrarian Enquiry Committee which was -- appointed by the Government of Behar and Orissa consisting of officials and non-officials, the Minutes of the Committee were regarded as an official record, and -- declared by Government as such. It was there contended, as it has been done here, that the papers did not fall within the description of "unpublished official records relating to affairs of State" as decided by that Government, but it was held by the High Court in I.L.R.48 Cal. 304 at page 318, that for the purpose of Section 123 of the Evidence Act the Court whose aid was invoked for the production of the document, could not be invited to discuss the nature of it and that it is the public officer concerned, and not the Judge, that should decide whether the evidence referred to therein should be permitted to be given or withheld. This decision has since been - followed in 1930 A.I.R. Mad.342.

It

It was also argued that the expression "affairs of State" used in Section 123 should receive a restrictive interpretation, so as to cover only matters relating directly to one of the great Departments of State, in other words, "secrets of State". The intendment of Section 162, read with Section 123, appears to be that when once a document is shown to be an unpublished official record in the possession of a Government Officer it should be for the Head of the Department concerned to determine, whether by reason of the document bearing on any "affair of State", evidence should be permitted to be given or not. The Court can neither inspect such a document, nor enquire into its nature or contents. The question, therefore, whether a particular record in the possession of Government relates to "affairs of State" after it has been so declared by Government, as in this case, is not, in our opinion, open to controversy in Court.

In the result this revision petition fails and is dismissed with costs of Government. Advocate's fee Rupees fifty.

(Sd) C. S. Doraswami Iyer.
CHIEF JUSTICE.

(Sd) G. Sreenivasa Iyer.
JUDGE.

Amount of costs payable by the petitioner(plaintiff) to the Government of Mysore is Rs.50/-

(Sd) N. B. Srinivasiengar.
Deputy Registrar.

"Copy"

GS/4.

N B Srinivasiengar
Dy: Registrar.

B. 2134 of 30

In reply please refer to
No. 1425

Tel. Address "JURIST," Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore 27th October 1930.

FROM

M. RAMACHANDRA RAO, ESQ., B.A, B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

The Secretary to the Government
of His Highness the Maharaja of Mysore,
Law Department,
Bangalore.

SIR,

As desired in your D. O. letter No. P. 1425/Law, dated the 9th September 1930, I have the honor to forward herewith a copy of the order passed in Criminal Revision Petition No. 115 of 1929-30 on the file of the High Court of Mysore, (D. Shama Rao VERSUS. Md. Abbas Khan).

I have the honor to be,
Sir,
Your most obedient servant,

M. Ramachandra Rao

Government Advocate.

14

GOVT. ADVOCATE'S OFFICE.
21 OCT 1930
BANGALORE.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Monday, the 8th day of September 1930.

Present.

Rajadharmapravina

C.S. Doraswami Iyer, Chief Justice,

and

Mr. Justice C.Srinivasa Iyer.

Criminal Revision Petition No. 115 of 1929-30.

D. Shama Rao ... Complainant ... PETITIONER

(by Mr. C. Seshachar)

Vs.

Mahomed Abbas Khan ... Accused ... OPPONENT

(Absent)

The Chief Secretary to the Government of Mysore

by Mr. H. Ramachandra Rao, Government Advocate.

Criminal revision petition against the order, dated 17th August ~~1930~~ 1929, passed by the Second Magistrate, Bangalore, in Criminal Case No. 271 of 1928-29.

This petition coming on for hearing on Monday, the 14th day of July 1930, the Court pronounced the following:-

Order.

O R D E R.

A complaint for defamation was lodged in the Court of the First Class Bench of Magistrates, in the Bangalore City. In the course of the enquiry, the Chief Secretary was summoned to produce a statement, alleged to have been made by the accused in camera. before the Committee appointed by Government to investigate and report on certain matters connected with the disturbances that occurred in Bangalore in July 1928. The Chief Secretary claimed privilege in respect of the document under section 123 of the Evidence Act, on the strength of the Government Order, dated 6th December 1928. The Bench of Magistrates disallowed the claim and directed the production of the document.

The case was subsequently transferred to the file of the Second Magistrate, Bangalore. That Magistrate, thereupon, ordered under Section 350, Criminal Procedure Code, that the complainant should begin his case afresh, and re-summon all the prosecution witnesses. When the Chief Secretary was re-summoned to produce the accused's in-camera statement, he again claimed privilege, as he did before the Bench of Magistrates, and the Government Advocate who appeared on behalf of Government also claimed a similar privilege. The Magistrate upheld this claim and this revision petition is filed against that order.

It is argued before us that the Magistrate was wrong in holding that the document was a privileged one, and that in any event he had no jurisdiction to go behind the order already passed by the Court of the Bench

of

of Magistrates, disallowing the claim for privilege.

In view of the fact that we have held in Civil Revision Petition No. 141 of 1929-30 (B.K.Garudachar Vs. Mahomed Abbas Khan) that the statement in question is a privileged document and its production cannot be compelled for the reasons stated therein, it is unnecessary to consider whether the provisions of section 350, Criminal Procedure Code, would enable the Magistrate while recommencing the enquiry to ignore altogether all interlocutory orders passed by the Bench of Magistrates, or would merely enable the Magistrate to resummon, for examination afresh, the witnesses that had already been examined by the Bench Court, prior to the transfer. We must confess that we have grave doubts whether the effect of an order for de novo trial wipes out even the interlocutory orders passed by the Court from which the mmmrt case has been transferred, but, as already stated, the question does not call for decision, in the view we have taken on the first point. This revision petition is therefore rejected.

Sd/- C. S. Dwarakanathiyer

CHIEF JUSTICE.

Sd/- G. Srinivasayya

J U D G E.

HIGH COURT OF MYSORE

Copy

Dy. Registrar